



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2017-0040; FRL-9963-13-Region 10]

Air Plan Approval; Alaska: Infrastructure Requirements for the 2008 Lead

National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, each state must submit a plan for the implementation, maintenance and enforcement of such standard, commonly referred to as infrastructure requirements. On July 9, 2012, Alaska submitted a plan to address the infrastructure requirements for the lead (Pb) NAAQS promulgated on October 15, 2008. The Environmental Protection Agency (EPA) is proposing to approve the plan as meeting Clean Air Act (CAA) requirements.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2017-0040, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose

disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION: Throughout this document, wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

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I. Background

On October 15, 2008, the EPA revised the level of the primary and secondary Pb standards to 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) (73 FR 66964). The CAA requires that states submit SIPs meeting the requirements of CAA sections 110(a)(1) and (2) within three years after promulgation of a new or revised standard. CAA sections 110(a)(1) and (2) require

states to address basic SIP elements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called infrastructure requirements. To help states, on October 14, 2011, the EPA issued guidance to address the infrastructure requirements for the 2008 Pb NAAQS (2011 Guidance).¹ In addition, the EPA issued general infrastructure guidance for multiple NAAQS (2013 Guidance).² As noted in these guidance documents, to the extent an existing SIP already meets the CAA section 110(a)(2) requirements, states may certify that fact via a letter to the EPA.

On July 9, 2012, the Alaska Department of Environmental Conservation (ADEC) submitted to the EPA a certification that Alaska's SIP meets the infrastructure requirements for the 2008 Pb NAAQS and a number of other NAAQS.³ We note that this action only addresses infrastructure requirements for the 2008 Pb NAAQS and does not address certain interstate transport requirements for the 2008 Pb NAAQS which we previously approved on August 4, 2014 (79 FR 45103).

II. Infrastructure Elements

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. CAA section 110(a)(2) lists specific

¹ Stephen D. Page, Director, Office of Air Quality Planning and Standards. "Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards." Memorandum to EPA Air Division Directors, Regions I-X, October 14, 2011.

² Stephen D. Page, Director, Office of Air Quality Planning and Standards. "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)." Memorandum to EPA Air Division Directors, Regions I – 10, September 13, 2013.

³ The July 9, 2012, submission also addressed infrastructure requirements for the 1997 and 2006 PM_{2.5} and 1997 and 2008 ozone NAAQS – which we approved in a series of actions on October 15, 2008 (73 FR 60955), October 22, 2012 (77 FR 64425), August 4, 2014 (79 FR 45103), and November 10, 2014 (79 FR 66651).

elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. These requirements include elements such as modeling, monitoring, and emission limits that are designed to implement, maintain and enforce the NAAQS. The requirements, with their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

The EPA's guidance document clarified that two elements identified in CAA section 110(a)(2) are not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three

years after promulgation of a new or revised NAAQS, but rather, are due at the time the nonattainment area plan requirements are due pursuant to CAA section 172 and the various pollutant specific subparts 2 – 5 of part D. These requirements are: (i) submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by CAA section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR) nor CAA section 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title I of the CAA are not changed by a new NAAQS.

III. EPA Approach to Review of Infrastructure Submissions

The EPA is taking action on the July 9, 2012 infrastructure submission from Alaska for purposes of the 2008 Pb NAAQS. We previously approved the same submission as meeting infrastructure requirements for fine particulate matter and ozone standards (November 10, 2014, 79 FR 66651). In the preamble of our action, we published a discussion of the EPA's approach to review of these submissions. Please see our July 16, 2014 proposed rule for the detailed discussion (79 FR 41496, at page 41498).

IV. EPA Evaluation

110(a)(2)(A): Emission limits and other control measures

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other

control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.

State submission: The submission cites laws set forth at Alaska Statutes (AS) Chapters 46.03 Environmental Conservation and 46.14 Air Quality Control, and regulations set forth at 18 AAC 50 Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50 Air Quality Control (18 AAC 50). Relevant regulations are listed below:

- 18 AAC 50.010: Ambient Air Quality Standards.
- 18 AAC 50.015: Air Quality Designations, Classifications, and Control Regions.
- 18 AAC 50.040: Federal Standards Adopted by Reference.
- 18 AAC 50.055: Industrial Processes and Fuel Burning Equipment.
- 18 AAC 50.302: Construction Permits.
- 18 AAC 50.306: Prevention of Significant Deterioration Permits.
- 18 AAC 50.345: Construction and Operating Permits: Standard Permit Conditions.
- 18 AAC 50.502: Minor Permits for Air Quality Protection.
- 18 AAC 50.508: Minor Permits Requested by the Owner or Operator.
- 18 AAC 50.540: Minor Permit Application.
- 18 AAC 50.542: Minor Permit Review and Issuance.

EPA analysis: On September 19, 2014, the EPA approved numerous revisions to the Alaska SIP, including updates to 18 AAC 50.010 *Ambient Air Quality Standards* to reflect revisions to the NAAQS, including the 2008 Pb NAAQS (79 FR 56268). Alaska generally

regulates emissions of Pb through its SIP-approved major and minor new source review (NSR) permitting programs. There are no designated nonattainment areas in Alaska for the 2008 Pb NAAQS. However, the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D, title I of the CAA to be governed by the submission deadline of CAA section 110(a)(1). Regulations and other control measures for purposes of attainment planning under part D, title I of the CAA are due on a different schedule than infrastructure SIPs.

Alaska's major NSR permitting rules in 18 AAC Chapter 50, Article 3 for attainment and unclassifiable areas, generally rely on the federal PSD program regulations at 40 CFR 51.166 and 40 CFR 52.21, which are incorporated by reference into the Alaska SIP, to implement its SIP-approved PSD permitting program. The EPA most recently approved revisions to Alaska's PSD permitting rules on May 19, 2016 (81 FR 31511). The current Alaska SIP-approved PSD program incorporates by reference specific regulations at 40 CFR 52.21 and 40 CFR 51.166 as of December 9, 2013.

Alaska regulates minor stationary sources of Pb through its federally-approved minor NSR permitting program. Alaska's minor NSR permitting rules in 18 AAC Chapter 50, Article 5 were originally approved into the SIP on July 5, 1983, and the state has made updates and revisions to the program throughout the years. The EPA most recently approved substantive revisions to the Alaska minor NSR program on September 19, 2014 (79 FR 56268), and minor clarifications on May 19, 2014 (81 FR 31511). In addition, we note that Alaska's SIP contains rules that regulate industrial sources of pollutants, including incinerator emission standards and emission limits for specific industrial processes and fuel burning equipment. Based on the

foregoing, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(A) for the 2008 Pb NAAQS.

In this action, we are not proposing to approve or disapprove any existing Alaska provisions with respect to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. The EPA believes that a number of states may have SSM provisions that are contrary to the CAA and existing EPA guidance and the EPA is addressing such state regulations in a separate action. *See* “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction: Final Rule.” (June 12, 2015, 80 FR 33840) (SSM SIP Call). The EPA determined that certain SIP provisions in 36 states (applicable in 45 statewide and local jurisdictions), including Alaska, were substantially inadequate to meet CAA requirements, and thus issued a SIP call for each of those 36 states. The SIP call also embodies the EPA’s updated SSM Policy as it applies to SIP provisions and provides guidance to states for compliance with CAA requirements for SIP provisions applicable to excess emissions during SSM events. Alaska submitted a SIP revision on January 9, 2017 in response to the SIP Call. We intend to address the January 9, 2017 submission in a separate action.

In addition, we are not proposing to approve or disapprove any existing Alaska rules with respect to director’s discretion or variance provisions. Some states may have such provisions that are contrary to the CAA and existing EPA guidance and the EPA is addressing such regulations in a separate action via the SSM SIP Call (June 12, 2015, 80 FR 33840). We encourage any state

having a director's discretion or variance provision that is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

110(a)(2)(B): Ambient air quality monitoring/data system

CAA section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to the EPA upon request.

State submission: The submission references Alaska statutory and regulatory authority to conduct ambient air monitoring investigations. AS 46.03.020 *Powers of the department* paragraph (5) provides authority to undertake studies, inquiries, surveys, or analyses essential to the accomplishment of the purposes of ADEC. AS 46.14.180 *Monitoring* provides authority to require sources to monitor emissions and ambient air quality to demonstrate compliance with applicable permit program requirements. 18 AAC 50.201 *Ambient Air Quality Investigation* provides authority to require a source to do emissions testing, reduce emissions, and apply controls to sources.

The submission references ADEC's revised *Quality Assurance Project Plan for the State of Alaska Air Monitoring and Quality Assurance Program* as amended through February 23, 2010. This document is adopted by reference into the State Air Quality Control Plan at 18 AAC 50.030(4). ADEC states that the manual includes the appropriate, federally-referenced ambient air quality monitoring and analysis procedures and data quality objectives. Validated State & Local Air Monitoring Stations, and Special Purpose Monitoring ambient air quality monitoring data are verified, and then electronically reported to the EPA through the Air Quality System on

a quarterly basis.

The submission also references 18 AAC 50.035 *Documents, Procedures, and Methods Adopted by Reference* which include the most current, federal reference and interpretation methods for Pb. These methods are used by ADEC in ambient air quality monitoring program to determine compliance with the standards.

EPA analysis: A comprehensive air quality monitoring plan, intended to meet the requirements of 40 CFR part 58 was submitted by Alaska on January 18, 1980 and approved by the EPA on April 15, 1981 (40 CFR 52.70). This monitoring plan has been updated and revised over time. The EPA most recently reviewed Alaska's 2015 monitoring plan⁴ on October 28, 2015.⁵ Alaska's 2015 plan references the source-oriented ambient air monitoring for Pb that was conducted at the Red Dog Mine, located in a remote part of the Northwest Arctic Borough. In 2016, the state requested a waiver from source-oriented monitoring requirements at the mine based on dispersion modeling, the results of which demonstrated that the source will not contribute to a maximum lead concentration in ambient air in excess of 50 percent of the Pb NAAQS. The EPA granted the waiver request on August 11, 2016.⁶

We find that the Alaska Pb monitoring network meets the requirements of 40 CFR part 58 and we are therefore proposing to approve the Alaska SIP as meeting CAA section 110(a)(2)(B) for the 2008 Pb NAAQS. We note that the waiver must be renewed once every five years as part of the network assessment required under 40 CFR 58.10(d). If site conditions have

⁴ 2015 Alaska Ambient Air Monitoring Network Plan.

⁵ 2015 Ambient Air Monitoring Network Plan Approval Letter, October 28, 2015.

⁶ Red Dog Mine Monitoring Waiver Letter, August 11, 2016.

changed such that the previous modeling is no longer appropriate, ADEC must update the modeling based on current conditions. *See* 40 CFR part 58, Appendix D, Section 4.5(a)(ii).

110(a)(2)(C): Program for enforcement of control measures

CAA section 110(a)(2)(C) requires states to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

State submission: The submission references ADEC's statutory authority to regulate stationary sources via an air permitting program established in AS 46.14 "Air Quality Control," Article 01 "General Regulations and Classifications" and Article 02 "Emission Control Permit Program." The submission states that ADEC's PSD/NSR programs were approved by the EPA on August 14, 2007 (72 FR 45378). The submission references the following regulations:

- 18 AAC 50.045: Prohibitions.
- 18 AAC 50.302: Construction Permits.
- 18 AAC 50.306: Prevention of Significant Deterioration Permits.
- 18 AAC 50.345: Construction and Operating Permits: Standard Permit Conditions.
- 18 AAC 50.508: Minor Permits Requested by the Owner or Operator.
- 18 AAC 50.540: Minor Permit: Application.
- 18 AAC 50.542: Minor Permit Review and Issuance.
- 18 AAC 50.542(c): Screening Ambient Air Quality Analysis.

The submission states that a violation of the prohibitions in the regulations above, or any permit condition, can result in civil actions (AS 46.03.760 *Civil action for pollution; damages*),

administrative penalties (AS 46.03.761 *Administrative penalties*), or criminal penalties (AS 46.03.790 *Criminal penalties*). In addition, the submission refers to regulations pertaining to compliance orders and enforcement proceedings found at 18 AAC Chapter 95 *Administrative Enforcement*. AS 46.03.820 *Emergency Powers* provides ADEC with emergency order authority where there is an imminent and present danger to health or welfare.

EPA analysis: With respect to the requirement to have a program providing for enforcement of all SIP measures, we are proposing to find that Alaska statute provides ADEC authority to enforce air quality regulations, permits, and orders promulgated pursuant to AS 46.03 and AS 46.14. ADEC staffs and maintains an enforcement program to ensure compliance with SIP requirements. ADEC has emergency order authority when there is an imminent or present danger to health or welfare or potential for irreversible or irreparable damage to natural resources or the environment. Enforcement cases may be referred to the State Department of Law. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C) related to enforcement for the 2008 Pb NAAQS.

To generally meet the requirements of CAA section 110(a)(2)(C) with respect to the regulation of construction of new or modified stationary sources, states are required to have PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2008 Pb NAAQS. As explained above, we are not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D, title I of the CAA.

Alaska's major NSR permitting rules in 18 AAC Chapter 50, Article 3 for attainment and unclassifiable areas, generally relies on the federal PSD program regulations at 40 CFR 51.166

and 40 CFR 52.21, which are incorporated by reference into the Alaska SIP, to implement its SIP-approved PSD permitting program. The EPA most recently approved revisions to Alaska's PSD permitting program on May 19, 2016 (81 FR 31511). The current Alaska SIP-approved PSD permitting program incorporates by reference specific regulations at 40 CFR 52.21 and 40 CFR 51.166 as of December 9, 2013. We are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C) with respect to PSD for the 2008 Pb NAAQS.

With respect to CAA section 110(a)(2)(C) and (J), the EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates the state has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of CAA section 110(a)(2)(D)(i)(II) may also be satisfied by demonstrating the state has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Alaska has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gas (GHG) emissions. We are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C), (D)(i)(II) and (J) with respect to PSD.

We note that on January 4, 2013, the U.S. Court of Appeals in the District of Columbia, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (DC Cir.), issued a judgment that remanded two of the EPA's rules implementing the 1997 PM_{2.5} NAAQS, including the "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})," (May 16, 2008, 73 FR 28321) (2008 PM_{2.5} NSR Implementation Rule). The court ordered the EPA to "repromulgate these rules pursuant to Subpart 4 consistent with

this opinion.” *Id.* at 437. Subpart 4 of part D, title I of the CAA establishes additional provisions for particulate matter nonattainment areas. The 2008 PM_{2.5} NSR Implementation Rule addressed by the court’s decision promulgated NSR requirements for implementation of PM_{2.5} in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 PM_{2.5} NSR Implementation Rule that address requirements for PM_{2.5} attainment and unclassifiable areas to be affected by the court’s opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 PM_{2.5} NSR Implementation Rule in order to comply with the court’s decision.

To address the court’s remand, the EPA promulgated a final rule for the “Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements” on August 24, 2016 (81 FR 58011). This rule sets requirements for major stationary sources in PM_{2.5} nonattainment areas. The EPA interprets the CAA section 110(a)(1) and (2) infrastructure submissions due three years after adoption or revision of a NAAQS to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which are due by the dates statutorily prescribed under subparts 2 through 5 under part D, extending as far as ten years following designations for some elements. Accordingly, our proposed approval of elements 110(a)(2)(C), (D)(i)(II), and (J), with respect to the PSD requirements, does not conflict with the court’s opinion.

In addition, on January 22, 2013, the U.S. Court of Appeals for the District of Columbia,

in *Sierra Club v. EPA*, 703 F.3d 458 (D.C. Cir. 2013), issued a judgment that, among other things, vacated the provisions adding the PM_{2.5} Significant Monitoring Concentration (SMC) to the federal regulations, at 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c), that were promulgated as part of the “Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC); Final Rule,” (October 10, 2010, 75 FR 64864) (2010 PSD PM_{2.5} Implementation Rule). In its decision, the court held that the EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for PM_{2.5} be included in all PSD permit applications. Thus, although the PM_{2.5} SMC was not a required element of a state’s PSD program, were a state PSD program that contains such a provision to use that provision to issue new permits without requiring ambient PM_{2.5} monitoring data, such application of the vacated SMC would be inconsistent with the court’s opinion and the requirements of section 165(e)(2) of the CAA.

This decision also, at the EPA’s request, vacated and remanded to the EPA for further consideration the portions of the 2010 PSD PM_{2.5} Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to Significant Impact Levels(SILs) for PM_{2.5}. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for PM_{2.5}, because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the Federal Register publication when we promulgated these provisions. The third SIL provision (40 CFR

51.165(b)(2)) was not vacated and remains in effect. The court's decision does not affect the PSD increments for PM_{2.5} promulgated as part of the 2010 PSD PM_{2.5} Implementation Rule.

The EPA amended its regulations to remove the vacated PM_{2.5} SILs and SMC provisions from PSD regulations on December 9, 2013 (78 FR 73698). On May 19, 2016, we approved revisions to the Alaska SIP as being consistent with the court decision and revised EPA regulations (81 FR 31511).

The EPA has also promulgated revisions to federal PSD requirements for greenhouse gas (GHG) emissions, in response to a court remand and vacatur. Specifically, on June 23, 2014, the United States Supreme Court, in *Utility Air Regulatory Group (UARG) v. EPA*,⁷ issued a decision that said the EPA may not treat GHGs as air pollutants for purposes of determining whether a source is a major source (or modification thereof) required to obtain a PSD permit. The Court also said the EPA could continue to require that PSD permits otherwise required based on emissions of pollutants other than GHGs contain limits on GHG emissions based on the application of Best Available Control Technology (BACT).

In response to the *UARG* decision, and the subsequent Amended Judgment issued by the D.C. Circuit (Amended Judgment),⁸ the EPA revised the federal PSD rules to allow for the rescission of PSD permits that are no longer required under these decisions, (May 7, 2015, 80 FR 26183), and to remove the regulatory provisions that were specifically vacated by the Amended Judgment, (August 19, 2015, 80 FR 50199) (removing 40 CFR 51.166(b)(48)(v), 52.21(b)(49)(v), 52.22, 70.12, and 71.13). In addition, the EPA proposed to revise provisions in

⁷ 134 S.Ct. 2427 (2014).

⁸ *Coalition for Responsible Regulation v. EPA*, Nos. 09-1322, 10-073, 10-1092, and 10-1167 (April 15, 2015).

the PSD permitting regulations applicable to GHGs to fully conform with *UARG* and the Amended Judgment, but those revisions have not been finalized (Oct. 3, 2016, 81 FR 68110).

The EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision and the EPA's changes to federal PSD rules in response to the decision. At this juncture, the EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, the EPA has determined the Alaska SIP is sufficient to satisfy CAA section 110(a)(2)(C), (D)(i)(II) and (J) with respect to GHGs because the PSD permitting program previously-approved by the EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Alaska PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy CAA section 110(a)(2)(C), (D)(i)(II) and (J) for purposes of the 2008 Pb NAAQS.

The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that the EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect our proposed approval of the Alaska SIP as meeting the requirements of CAA section

110(a)(2)(C), (D)(i)(II) and (J) as those elements relate to a comprehensive PSD program. In this action we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C), (D)(i)(II) and (J) as those elements relate to a comprehensive PSD program.

Turning to the minor NSR requirement, Alaska regulates minor stationary sources of Pb through its federally-approved minor NSR permitting program. Alaska's program was originally approved into the SIP on July 5, 1983, and the state has made updates and revisions to the program throughout the years. The EPA most recently approved substantive revisions to the Alaska minor NSR program on September 19, 2014 (79 FR 56268). Based on the foregoing, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 2008 Pb NAAQS.

110(a)(2)(D): Interstate transport

CAA section 110(a)(2)(D)(i) requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state (CAA section 110(a)(2)(D)(i)(I)). Further, this section requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality, or from interfering with measures required to protect visibility (i.e. measures to address regional haze) in any state (CAA section 110(a)(2)(D)(i)(II)). As noted above, this action also does not address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS which we previously approved on August 4, 2014 (79 FR 45103).

State submission: For purposes of CAA section 110(a)(2)(D)(i)(II), the submission references the Alaska SIP-approved PSD program and the Alaska Regional Haze Plan.

EPA analysis: CAA section 110(a)(2)(D)(i)(II) requires state SIPs to contain adequate provisions prohibiting emissions which will interfere with any other state's required measures to prevent significant deterioration (PSD) of its air quality (prong 3), and adequate provisions prohibiting emissions which will interfere with any other state's required measures to protect visibility (prong 4).

To address whether emissions from sources in Alaska interfere with any other state's required measures to prevent significant deterioration of air quality, the submission references the Alaska federally-approved PSD program. The EPA most recently approved revisions to Alaska's PSD program on May 19, 2016 (81 FR 31511). The Alaska SIP incorporates by reference federal PSD requirements as of December 9, 2013. We believe that our proposed approval of element 110(a)(2)(D)(i)(II) is not affected by recent court vacatur of federal PSD implementing regulations. Please see our discussion at section 110(a)(2)(C). Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to PSD (prong 3) for the 2008 Pb NAAQS.

To address whether emissions from sources in Alaska interfere with any other state's required measures to protect visibility, the submission references the Alaska Regional Haze SIP, which was submitted to the EPA on March 29, 2011. The Alaska Regional Haze SIP addresses visibility impacts across states within the region. On February 14, 2013, the EPA approved the Alaska Regional Haze SIP, including the requirements for best available retrofit technology (78

FR 10546).

The EPA believes, as noted in the 2013 Guidance, that with respect to the CAA section 110(a)(2)(D)(i)(II) visibility sub-element, where a state's regional haze SIP has been approved as meeting all current obligations, a state may rely upon those provisions in support of its demonstration that it satisfies the requirements of CAA section 110(a)(2)(D)(i)(II) as it relates to visibility. Because the Alaska Regional Haze SIP was found to meet federal requirements, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2008 Pb NAAQS (prong 4).

Interstate and International transport provisions

CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

State submission: The submission references Alaska's federally-approved PSD program. The submission also references SIP revisions submitted by ADEC to update the Alaska PSD program.

EPA analysis: Alaska's major NSR permitting rules in 18 AAC Chapter 50, Article 3 for attainment and unclassifiable areas, generally rely on the federal PSD program regulations at 40 CFR 51.166 and 40 CFR 52.21, which are incorporated by reference into the Alaska SIP, to implement its SIP-approved PSD permitting program. As noted above, the EPA most recently approved revisions to Alaska's PSD permitting program on May 19, 2016 (81 FR 31511). The

current Alaska SIP-approved PSD permitting program incorporates by reference specific regulations at 40 CFR 52.21 and 40 CFR 51.166 as of December 9, 2013. At 18 AAC 50.306(b), Alaska's federally-approved SIP incorporates by reference the general provisions of 40 CFR 51.166(q)(2) to describe the public participation procedures for PSD permits, including requiring notice to states whose lands may be affected by the emissions of sources subject to PSD. As a result, Alaska's PSD regulations provide for notice consistent with the requirements of the EPA PSD program. Alaska also has no pending obligations under section 115 or 126(b) of the CAA. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 2008 Pb NAAQS.

110(a)(2)(E): Adequate resources

CAA section 110(a)(2)(E) requires each state to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof), (ii) requirements that the state comply with the requirements respecting state boards under CAA section 128 and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

State submission: The submission states that ADEC maintains adequate personnel, funding, and authority to implement the SIP. The submission refers to AS 46.14.030 *State Air Quality Control Plan* which provides ADEC statutory authority to act for the state and adopt

regulations necessary to implement the state air plan. The submission also references 18 AAC 50.030 *State Air Quality Control Plan* which provides regulatory authority to implement and enforce the SIP.

With respect to CAA section 110(a)(2)(E)(ii), the submission states that Alaska's regulations on conflict of interest are found in Title 2 – Administration, Chapter 50 Alaska Public Offices Commission: Conflict of Interest, Campaign Disclosure, Legislative Financial Disclosure, and Regulations of Lobbying (2 AAC 50.010 – 2 AAC 50.920). Regulations concerning financial disclosure are found in Title 2, Chapter 50, Article 1 – Public Official Financial Disclosure. There are no state air quality boards in Alaska. The ADEC commissioner, however, as an appointed official and the head of an executive agency, is required to file a financial disclosure statement annually by March 15th of each year with the Alaska Public Offices Commission (APOC). These disclosures are publically available through APOC's Anchorage office. Alaska's Public Officials Financial Disclosure Forms and links to Alaska's financial disclosure regulations can be found at the APOC website: <http://doa.alaska.gov/apoc/>.

With respect to CAA section 110(a)(2)(E)(iii) and assurances that the state has responsibility for adequate implementation of the plan where the state has relied on local or regional government agencies, the submission states that ADEC ensures local programs have adequate resources and documents this in the appropriate SIP section. Statutory authority for establishing local air pollution control programs is found at AS 46.14.400 *Local air quality control programs*.

The submission also states that ADEC provides technical assistance and regulatory

oversight to the Municipality of Anchorage (MOA), Fairbanks North Star Borough (FNSB) and other local jurisdictions to ensure that the State Air Quality Control Plan and SIP objectives are satisfactorily carried out. ADEC has a Memorandum of Understanding with the MOA and FNSB that allows them to operate air quality control programs in their respective jurisdictions. The South Central Clean Air Authority has been established to aid the MOA and the Matanuska-Susitna Borough in pursuing joint efforts to control emissions and improve air quality in the airshed common to the two jurisdictions. In addition, ADEC indicates the department works closely with local agencies on nonattainment plans.

EPA analysis: We are proposing to find that the Alaska SIP meets the adequate personnel, funding and authority requirements of CAA section 110(a)(2)(E)(i). Alaska receives sections 103 and 105 grant funds from the EPA and provides state matching funds necessary to carry out SIP requirements. For purposes of CAA section 110(a)(2)(E)(ii), we previously approved Alaska's conflict of interest disclosure and ethics regulations as meeting the requirements of CAA section 128 on October 22, 2012 (77 FR 64427). Finally, the EPA is proposing to find that Alaska has provided necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of the SIP with regards to the 2008 Pb NAAQS as required by CAA section 110(a)(2)(E)(iii). Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(E) for the 2008 Pb NAAQS.

110(a)(2)(F): Stationary source monitoring system

CAA section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

State submission: The submission states that ADEC has general statutory authority to regulate stationary sources via an air permitting program which includes permit reporting requirements, completeness determinations, administrative actions, and stack source monitoring requirements. The submission states ADEC has regulatory authority to determine compliance with these statutes via information requests and ambient air quality investigations. ADEC has adopted by reference the federal reference and interpretation methods for Pb into the Alaska SIP. The submission also references the SIP-approved Alaska PSD program. Ambient air quality and meteorological data that are collected for PSD purposes by stationary sources are reported to ADEC on a quarterly and annual basis.

The submission refers to the following statutory and regulatory provisions providing authority and requirements for source emissions monitoring, reporting, and correlation with emission limits or standards:

- AS 46.14.140: Emission control permit program regulations.
- AS 46.14.180: Monitoring.

- 18 AAC 50.035: Documents, Procedures, and Methods Adopted by Reference.
- 18 AAC 50.040: Federal Standards Adopted by Reference.
- 18 AAC 50.200: Information Requests.
- 18 AAC 50.201: Ambient Air Quality Investigation.
- 18 AAC 50.220: Enforceable test methods.
- 18 AAC 50.306: Prevention of Significant Deterioration Permits.
- 18 AAC 50.345: Construction and Operating Permits: Standard Permit Conditions.

EPA analysis: The Alaska SIP establishes compliance requirements for sources subject to major and minor source permitting to monitor emissions, keep and report records, and collect ambient air monitoring data. 18 AAC 50.200 *Information Requests* provides ADEC authority to issue an information request to an owner, operator, or permittee for purposes of ascertaining compliance. 18 AAC 50.201 *Ambient Air Quality Investigations* provides authority to require an owner, operator, or permittee to evaluate the effect emissions from the source have on ambient air quality. In addition, 18 AAC 50.306 *Prevention of Significant Deterioration Permits* and 18 AAC 50.544 *Minor Permits: Content* provide for establishing permit conditions to require the permittee to install, use and maintain monitoring equipment, sample emissions, provide source test reports, monitoring data, emissions data, and information from analysis, keep records and make period reports on process operations and emissions. This information is made available to the public through public processes outlined in these SIP-approved rules.

Additionally, states are required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions

data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors – nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website <https://www.epa.gov/air-emissions-inventories>. Based on the above analysis, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2008 Pb NAAQS.

110(a)(2)(G): Emergency episodes

CAA section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

State submission: The submission cites AS 46.03.820 *Emergency powers* which provides ADEC with emergency order authority where there is an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment. The submission also refers to 18

AAC 50.245 *Air Episodes and Advisories* which authorizes ADEC to declare an air alert, air warning, or air advisory to notify the public and prescribe and publicize curtailment action.

EPA analysis: Section 303 of the CAA provides authority to the EPA Administrator to restrain any source from causing or contributing to emissions which present an “imminent and substantial endangerment to public health or welfare, or the environment.” The EPA finds that AS 46.03.820 *Emergency Powers* provides emergency order authority comparable to CAA Section 303.

The EPA’s regulations for emergency episodes are in 40 CFR part 51 subpart H. The regulations prescribe the requirements for emergency episode plans based on classification of regions in a state for a subset of the criteria pollutants. As indicated in our 2011 Guidance, we note that 40 CFR part 51 subpart H does not apply to Pb. Based on the EPA’s experience to date with the Pb NAAQS and designating Pb nonattainment areas, we expect that an emergency episode associated with Pb emissions would be unlikely and, if it were to occur, would be the result of a malfunction or other emergency situation at a relatively large source of Pb. The EPA believes that AS 46.03.820 *Emergency Powers* provides adequate authority to address an emergency situation at a large source of Pb. Based on the foregoing, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2008 Pb NAAQS.

110(a)(2)(H): Future SIP Revisions

CAA section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or

secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

State submission: The submission refers to statutory authority to adopt regulations in order to implement the CAA and the state air quality control program at AS 46.03.020(10)(A) *Powers of the Department* and AS 46.14.010(a) *Emission Control Regulations*. The submission also refers to regulatory authority to implement provisions of the CAA at 18 AAC 50.010 *Ambient Air Quality Standards*. The submission affirms that ADEC regularly updates the Alaska SIP as new NAAQS are promulgated by the EPA.

EPA analysis: As cited above, the Alaska SIP provides for revisions, and in practice, Alaska regularly submits SIP revisions to the EPA to take into account revisions to the NAAQS and other federal regulatory changes. We have approved many revisions to the Alaska SIP, most recently on May 19, 2016 (81 FR 31511), March 18, 2015 (80 FR 14038), September 19, 2014 (79 FR 56268), August 9, 2013 (78 FR 48611), May 9, 2013 (78 FR 27071) and January 7, 2013 (78 FR 900). Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of section 110(a)(2)(H) for the 2008 Pb NAAQS.

110(a)(2)(I): Nonattainment area plan revision under part D

EPA analysis: There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1), because SIPs incorporating

necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but are rather due at the time of the nonattainment area plan requirements pursuant to section 172 and the various pollutant specific subparts 2 – 5 of part D. These requirements are: (i) submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by CAA section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment NSR or CAA section 110(a)(2)(I).

110(a)(2)(J): Consultation with government officials

CAA section 110(a)(2)(J) requires states to provide a process for consultation with local governments and federal land managers carrying out NAAQS implementation requirements pursuant to section 121. CAA section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

State submission: The submission refers to statutory authority to consult and cooperate with officials of local governments, state and federal agencies, and non-profit groups found at AS 46.030.020 *Powers of the department* paragraphs (3) and (8). The submission states that municipalities and local air quality districts seeking approval for a local air quality control

programs shall enter into a cooperative agreement with ADEC according to AS 46.14.400 *Local air quality control programs*, paragraph (d). ADEC can adopt new CAA regulations only after a public hearing, per AS 46.14.010 *Emission control regulations*, paragraph (a). In addition, the submission states that public notice and public hearing regulations for SIP submissions and air quality discharge permits are found at 18 AAC 15.050 and 18 AAC 15.060. Finally, the submission also references the SIP-approved Alaska PSD program and Regional Haze SIP.

EPA analysis: The EPA finds that the Alaska SIP, including the Alaska rules for major source permitting, contains provisions for consulting with government officials as specified in CAA section 121. Alaska's PSD program provides opportunity and procedures for public comment and notice to appropriate federal, state and local agencies. We most recently approved revisions to the Alaska PSD program on May 19, 2016 (81 FR 31511). In addition, we most recently approved the Alaska rules that define transportation conformity consultation on September 8, 2015 (80 FR 53735). On February 14, 2013, we approved the Alaska Regional Haze SIP (78 FR 10546).

ADEC routinely coordinates with local governments, states, federal land managers and other stakeholders on air quality issues including transportation conformity and regional haze, and provides notice to appropriate agencies related to permitting actions. Alaska participates in regional planning processes including the Western Regional Air Partnership which is a voluntary partnership of states, tribes, federal land managers, local air agencies and the EPA formed to evaluate current and evolving regional air quality issues in the West. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for

consultation with government officials for the 2008 Pb NAAQS.

Section 110(a)(2)(J) also requires the public be notified if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. ADEC is a partner in the EPA's AIRNOW and Enviroflash Air Quality Alert programs, which provide air quality information to the public for five major air pollutants regulated by the CAA: ground-level ozone, particulate matter, carbon monoxide, sulfur dioxide, and nitrogen dioxide. Alaska also provides real-time air monitoring information to the public on the ADEC air quality website at <http://dec.alaska.gov/> in addition to air advisory information. During the summer months, the Fairbanks North Star Borough prepares a weekly Air Quality forecast for the Fairbanks area. The forecast is found at <http://co.fairbanks.ak.us/airquality/>.

While we note that Pb is not part of the EPA air quality alert programs, the Alaska SIP provides general authority at 18 AAC 50.245 *Air Episodes and Advisories* for notifying the public when air quality is degrading. We are therefore proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for public notification for the 2008 Pb NAAQS.

Turning to the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C) with respect to permitting. The EPA most recently approved revisions to Alaska's PSD program on May 19, 2016 (81 FR 31511). We are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for PSD for the 2008 Pb NAAQS. We note that our proposed approval of element 110(a)(2)(J) with respect to PSD is not

affected by recent court vacatur of the EPA's PSD implementing regulations. Please see our discussion regarding section 110(a)(2)(C).

With respect to the applicable requirements for visibility protection, the EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new applicable requirement related to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective. Based on the analysis above, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2008 Pb NAAQS.

110(a)(2)(K): Air quality and modeling/data

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

State submission: The submission states that air quality modeling is regulated under 18 AAC 50.215(b) *Ambient Air Quality Analysis Methods*. Estimates of ambient concentrations and visibility impairment must be based on applicable air quality models, databases, and other requirements specified in the EPA's Guideline on Air Quality Models are adopted by reference in 18 AAC 50.040 *Federal Standards Adopted by Reference*. Baseline dates and maximum allowable increases are found in Table 2 and Table 3, respectively, at 18 AAC 50.020 *Baseline*

Dates and Maximum Allowable Increases.

EPA analysis: On May 19, 2016, we approved revisions to 18 AAC 50.215 *Ambient Air Quality Analysis Methods* and 18 AAC 50.040 *Federal Standards Adopted by Reference* (81 FR 31511). 18 AAC 50.040, at paragraph (f), incorporates by reference the EPA regulations at 40 CFR part 51, Appendix W *Guidelines on Air Quality Models* revised as of July 1, 2013. In addition, as an example of Alaska's modeling capacity, Alaska submitted the Fairbanks Carbon Monoxide Maintenance Plan to the EPA on June 21, 2004, supported by air quality modeling. The maintenance plan and supporting modeling was approved by the EPA as a SIP revision on July 27, 2004 (69 FR 44605). Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2008 Pb NAAQS.

110(a)(2)(L): Permitting fees

CAA section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

State submission: The submission states that ADEC's statutory authority to assess and collect permit fees is established in AS 46.14.240 *Permit Administration Fees* and AS 46.14.250 *Emission Fees*. The permit fees for stationary sources are assessed and collected by the Air Permits Program according to 18 AAC 50, Article 4. ADEC is required to evaluate emission fee rates at least every four years and provide a written evaluation of the findings (AS 46.14.250(g); 18 AAC 50.410).

EPA analysis: The EPA fully approved Alaska's title V program on July 26, 2001 (66 FR 38940) with an effective date of September 24, 2001. While Alaska's operating permit

program is not formally approved into the SIP, it is a legal mechanism the state can use to ensure that ADEC has sufficient resources to support the air program, consistent with the requirements of the SIP. Before the EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. The Alaska title V program included a demonstration the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i).

In addition, Alaska's SIP requires fees for purposes of new source permitting. *See* 18 AAC 50.306(d)(2), 18 AAC 50.311(d)(2), 18 AAC 50.544(a)(2), and 18 AAC 50.400. Therefore, we are proposing to conclude that Alaska has satisfied the requirements of CAA section 110(a)(2)(L) for the 2008 Pb NAAQS.

110(a)(2)(M): Consultation/participation by affected local entities

CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

State submission: The submission states ADEC has authority to consult and cooperate with officials and representatives of any organization in the state; and persons, organization, and groups, public and private using, served by, interested in, or concerned with the environment of the state. The submission refers to AS 46.030.020 *Powers of the department*, paragraphs (3) and (8), which provide authority to ADEC to consult and cooperate with affected state and local entities. In addition, AS 46.14.400 *Local air quality control programs*, paragraph (d), provides authority for local air quality control programs and requires cooperative agreements between ADEC and local air quality control programs that specify the respective duties, funding, enforcement responsibilities, and procedures.

EPA analysis: The EPA finds that the Alaska provisions cited above provide for local and regional authorities to participate and consult in the SIP development process. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2008 Pb NAAQS.

V. Proposed Action

We are proposing to approve the Alaska SIP as meeting the following CAA section 110(a)(2) infrastructure elements for the 2008 Pb NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This action is being taken under section 110 of the CAA.

VI. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small

entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 10, 2017.

Michelle L. Pirzadeh,
Acting Regional Administrator,
Region 10.

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